



**State of Utah**

**Department of  
Natural Resources**

MICHAEL R. STYLER  
*Executive Director*

**Division of  
Oil, Gas & Mining**

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

December 21, 2006

CERTIFIED RETURN RECEIPT  
7004 2510 0004 1824 8125

Matt Carter  
Timberline Rock Pit, LLC  
P. O. Box 430  
Bountiful, UT 84011

Subject: Final Assessment for Cessation Order, MC-2006-01-02 (1), Timberline Rock Pit, LLC, Timberline Rock Pit Mine, S/049/053, Utah County, Utah

Dear Mr. Carter:

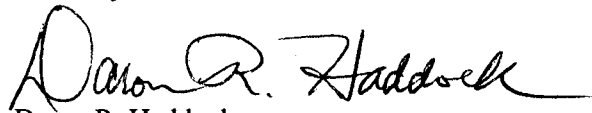
On November 6, 2006, the Division sent you the proposed reassessment, via Certified Mail, associated with the above-mentioned Cessation Order. Under rules R647-7-106 & R646-7-107 you are allowed 30 days from the receipt of the proposed assessment to request a conference or hearing to review the fact of the violation or assessment. Our records indicate that the proposed assessment was received on November 15, 2006.

If you wanted to appeal the fact of the Cessation Order or request a review of the proposed penalty assessment, that conference or hearing should have been requested on or before December 15, 2006. No request has been made; therefore, under R647-7-108 the opportunity to appeal is past and the proposed assessment is now considered final.

**The penalty in the amount of \$1,870 for MC-06-01-02 is now due and payable.** Please remit payment to the Division, mail c/o Vickie Southwick. Failure to provide the required payment within 30 days may result in civil action in the appropriate district court.

Thank you for resolving this situation. Please call me at (801) 538-5325 if you have any questions.

Sincerely,

  
Daron R. Haddock  
Assessment Officer

drh/vs

Enclosure: Worksheet

cc: Vickie Southwick, Exec. Sec.

Vicki Bailey, Accounting

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**WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS & MINING  
Minerals Regulatory Program**

COMPANY / MINE Matt Carter/ Timberline Rock Pit PERMIT M0490053

NOV / CO # MC-06-01-02-01 VIOLATION 1 of 1

ASSESSMENT DATE June 5, 2006

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>MC-05-01-18-01</u>	<u>11/21/2005</u>	<u>5</u>
<u>MC-05-01-18-02</u>	<u>11/21/2005</u>	<u>5</u>

**TOTAL HISTORY POINTS 10**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

**A. EVENT VIOLATION (Max 45 pts.)**

1. What is the event, which the violated standard was designed to prevent?

***Mining without appropriate approvals/ Environmental harm***

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*** *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. While the Operator has a small mine permit, he has expanded the area of disturbance to beyond the 5 acres that are allowed under that permit. Some 3-4 acres (small pits and access roads) have been disturbed at this location without having obtained approval to do so. Disturbance has actually occurred, thus assignment of 20 points.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

**ASSIGN DAMAGE POINTS 4**

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*** *The inspector stated that the operator had disturbed land (3-4 acres) that was outside of the approved permit area. Damage would be the loss of resources such as permanent vegetation and soil from the area disturbed. There is potential for sediment to leave the site, but no evidence of impacts off the site was observed. The damage is probably temporary and the site should be readily reclaimable. The soil resources have not been lost but have been replaced on the surface as excavation proceeded. The site matches surrounding topography and will require little/ no grading. Vegetation in the area was very sparse since much of it had been previously burned by a wildfire. Damage is considered minimal and points are assigned in the lower part of the range.*

**B. ADMINISTRATIVE VIOLATIONS (Max 25pts)**

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? \_\_\_\_\_  
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

\*\*\*

TOTAL SERIOUSNESS POINTS (A or B) 24

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *The Operator was cited for similar violations in November of 2005. At that time the permittee was not aware of the need for a permit from DOGM for this operation. He did secure a permit and was operating in the boundary of a small mine 5 acre area. He should have known that he needed to stay within the small mine boundary, but for some reason the contract operator that was excavating the rock chose to mine outside of the boundary. This appears to be a miscommunication problem between the permittee and the operator. The operator thought the site was permitted and the permittee failed to communicate what area was permitted. This indicates lack of reasonable care. A prudent operator would understand the need to stay within the boundary of a permit. The permittee is considered negligent because he was not careful to keep the disturbance within the permit boundary and he allowed mining to occur on more acreage than what was allowed under the current NOI. Points are assigned in the middle of the negligence range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- |   |   |             |
|---|---|-------------|
| X | Immediate Compliance  | -11 to -20* |
|   | (Immediately following the issuance of the NOV)   |             |
| X | Rapid Compliance  | -1 to -10   |
|   | (Permittee used diligence to abate the violation)                                       |             |
| X | Normal Compliance   | 0           |
|   | (Operator complied within the abatement period required)                                |             |
|   | (Operator complied with condition and/or terms of approved Mining and Reclamation Plan) |             |

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- |   |   |             |
|---|---|-------------|
| X | Rapid Compliance  | -11 to -20* |
|   | (Permittee used diligence to abate the violation)   |             |
| X | Normal Compliance   | -1 to -10*  |
|   | (Operator complied within the abatement period required)  |             |
| X | Extended Compliance   | 0           |
|   | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) |             |
|   | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)   |             |

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS -5

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* The permittee requested an informal conference and one was held on July 11, 2006. The finding, conclusion and order from the informal conference was sent to the permittee on August 28, 2006 wherein the Cessation Order was affirmed and the abatement deadline to submit a large mine plan was extended to September 25, 2006. Ultimately the permittee chose not to pursue a Large Mine and requested instead to reclaim the site. Reclamation of the site was completed on October 28, 2006 and the Order terminated on November 6, 2006.

At first the abatement of this CO required the submission of plans, which would indicate a difficult abatement, but this was later changed to allow the permittee to reclaim the

*site instead. Even though the reclamation did not require the submission of plans, I am still considering this to be a difficult abatement because of the complications between the operator and the permittee. Cooperation needed to occur in order for the site to be reclaimed and the CO to be terminated. The abatement was extended a couple of times to allow for the proper timing for reclamation, but ultimately the site was reclaimed within the extended abatement timeframes. I am awarding 5 good faith points for normal compliance of a difficult abatement.*

**V. ASSESSMENT SUMMARY (R647-7-103.3)**

NOTICE OF VIOLATION # <u>MC-06-01-02-01</u>	
I. TOTAL HISTORY POINTS	<u>10</u>
II. TOTAL SERIOUSNESS POINTS	<u>24</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u>-5</u>
TOTAL ASSESSED POINTS	<u>37</u>
TOTAL ASSESSED FINE	<u>\$ 1,870</u>